IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

FRIDAY, THE 3RD AUGUST 2007 / 12TH SRAVANA 1929

MACA.No. 1692 of 2005()

OPMV.734/2000 of MOTOR ACCIDENT CLAIMS TRIBUNAL, KASARAGOD

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APPELLANT/3RD RESPONDENT

THE MANAGER, NEW INDIA ASSURANCE COMPANY LTD., KASARAGOD NOW REPRESENTEWD BY ITS ASSISTANT ADMINISTRATIVE OFFICER, REGIONAL OFFICE, M.G.ROAD, KOCHI-11.

BY ADV. SRI.MATHEWS JACOB (SR.)
SRI.P.JACOB MATHEW

RESPONDENTS: PETITIONER AND RESPONDDENTS 1 & 2

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1. KRISHNA MANIYANI, S/O.SANKARA MANIYANI, MINCHIPADAVU, P.O.KUNTAR, ADHUR VILLAGE, KASARGOD TALUK.

2. C.KESHAVAN, S/O.CHAMU, OFFICE OF THE ASSISTANT EXECUTIVE OFFICER(AGRI), KASARGOD TALUK.

3. THE ASSISTANT EXECUTIVE ENGINEER, ENGINEER(AGRICULTURE), KASARGOD.

BY ADV. SRI.M.SASINDRAN
SRI.T.SETHUMADHAVAN
SRI.PUSHPARAJAN KODOTH

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 03/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.PADMANABHAN NAIR, J.

M.A.C.A No.1692 of 2005

Dated this the 3rd day of August 2007

JUDGMENT

This appeal is filed by the 3rd respondent- insurer in O.P (M.V) 734 of 2000 challenging the award by which the insurer was directed to pay compensation awarded in the case.

2. The 1st respondent was an employee of the 3rd respondent. On 3-5-2000 he was travelling in a tractor bearing Regn. No. KL-14/B-5585 driven by the 2nd respondent and owned by the 3rd respondent for brining water from Kuntha river for the requirements of the plantation. It is alleged that on account of the the rash or negligent driving of the vehicle by the 2nd respondent -driver the tractor capsized and the 1st respondent sustained injuries. He filed the original petition claiming an amount of Rs.1,00,000/- from the respondents as compensation. The 2nd respondent-driver filed written statement disputing his negligence. The 3rd respondent- owner admitted the accident. The 3rd respondent-owner also contended that there was no negligence on the part of the 2nd respondent- driver. It is contended that the vehicle was covered by a valid policy of insurance with the insurer and hence if it is found that the 1st respondent is entitled to get compensation the insurer is liable to pay the amount.

3. The appellant filed written statement contending that there

was violation of policy conditions and as such it is not liable to indeminfy the insured. It was contended that no passengers were allowed in a tractor and there was violation of provisions of Motor Vehicle Act and also the policy conditions. The Tribunal found that the accident occurred due to the negligence of the 2nd respondent. and the petitioner is entitled to get compensation of Rs. 33,000/- . It rejected the contentions raised by the appellant and directed it to pay the compensation.

4. I have carefully gone through the award passed by the Tribunal. The finding of the Tribunal that the accident occurred due to the negligence of the 2nd respondent is correct and does not call for any interference. The quantum of compensation awarded, is also correct. The only question arising for consideration is whether the appellant can be made liable for the amount. Ext.B3 is the insurance policy certificate. The conditions of policy shows that the tractor can be used only for agricultural and forestry purposes. The seating capacity is shown as zero. Apart from the premium collected for own damage, and the liability to public risk, towards the liability to driver coolies/ employees an amount of Rs.15 was collected. The Tribunal took a view that the policy covers not only the liability to driver but also it will cover the risk of coolies/ employees. The learned counsel appearing for the appellant submits that Rs.15 alone was collected for the liability to driver alone and since there is no seating capacity, no premium for coolies / employees were collected . But on

account of a mistake the word coolies /employees were not struck off. In **Oriental Insurance Co.Ltd Vs. Brij Mohan 2007 (3) KLT 123 (SC)** the Apex Court held that a tractor is not a goods carriage and it was meant to be used for agricultural purposes alone. Hence passenger is not covered . It is true that the materials on record shows that the tractor was used for bringing water from the Kuntha river for the requirements of the plantation is definitely for agricultural purposes. But the policy does not cover the risk of a passenger in it. So the finding of the Tribunal that the insurer is liable to pay the compensation is not correct and liable to be interfered with. I do so. I hold that the appellant/ insurer is not liable to pay the compensation as the policy issued does not cover passenger risk. I also direct the insurer to pay the amount to satisfy the award and realise the same from the owner of the tractor as held in Brij mohan's case (Supra)

5. In the result the appeal is allowed in part. The finding of the Tribunal that the 1st respondent sustained injuries on account of the negligence of the 2nd respondent and he is entitled to get compensation of Rs. 33,000/- is confirmed. But the award passed, directing the insurer to pay that amount is modified. The 2nd respondent owner is liable to pay the compensation. The appellant is directed to satisfy the award amount and recover the amount from the 2nd respondent-owner by executing this judgment .

K.PADMANABHAN NAIR, JUDGE

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